

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 89 of 2016

1. Govind Prashad Mishra S/o Late Shri Damodar Prashad Mishra Aged About 65 Years R/o Village Devbhog, Police Station Devbhog, District Gariyaband, Chhattisgarh.
2. Smt. Rukhmani W/o Govind Prashad Mishra Aged About 61 Years R/o Village Devbhog, Police Station Devbhog, District Gariyaband, Chhattisgarh.
3. Sudhir Kumar Mishra S/p Govind Prashad Mishra Aged About 33 Years R/o Village Devbhog, Police Station Devbhog, District Gariyaband, Chhattisgarh.
4. Shushil Kumar Mishra S/o Govind Prashad Mishra Aged About 30 Years R/o Village Devbhog, Police Station Devbhog, District Gariyaband, Chhattisgarh.

... **Petitioners**

Versus

State of Chhattisgarh through the Station House Officer, Police Station Devbhog, District Gariyaband, Chhattisgarh.

.... **Respondent**

For the applicant	:	Mr. Pawan Kesarwani, Advocate.
For the Respondent	:	Mr Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

19.02.2016

1. Apprehending arrest in connection with Crime No.11 of 2016 registered at Police Station Devbhog, District Gariyaband. (C.G) for the offences punishable under section 294, 506, 34 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the applicants have filed this application u/s 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution case, a complaint was made by

one Tushendra Singh Sandilya that on 16.12.2015 when he wanted to raise construction of his house on his plot, at that time the applicants along-with others came there and objected that it is their land and restrained the complainant to raise superstructure and as such the parties entered into altercation. It is further alleged that that during such altercation, the complainant was abused in the name of caste.

3. Learned counsel for the applicants submits that in fact applicant Govind Prashad Mishra was declared owner of the land in dispute bearing Khasra No.392/13 area 0.06 hectares by a decree passed in Civil Suit No.2-A/2014 wherein the Court has issued injunction against defendant No.1/complainant Tushendra Singh not to interfere with the possession of A-1 Govind Prashad Mishra. He further submits that the said decree also contains that applicant No.1 Govind Prashad Mishra would be entitled to take possession and when the execution notice was served, in order to dilute the fruits of the decree false averments have been made that the applicants have abused him in the name of caste and as such applicants have been falsely implicated. He therefore submits that in view of such background of the dispute, section 18 would not apply in this case and prays for releasing the applicants on anticipatory bail.
4. Per contra, learned State Counsel opposes the prayer for grant of bail and submits that the complainant was abused in the name of caste and therefore the benefit of section may not be extended to them.
5. Perused the documents and the case diary. Along-with

the application, a decree of civil suit No.2-A/2014 is placed, a perusal of which goes to show that civil suit was filed by plaintiff Govind Prashad Mishra (applicant no.1 herein) wherein complainant Tushendra Shandilya appears to be the defendant. A perusal of the case diary shows that a report was made on 16.12.2015 by the complainant but prior to this complaint, applicant Govind Prashad has lodged report before SHO Devbhog regarding abuses and assault made by the complainant and his followers. Consequently it appears that the decree for possession was passed in favour of applicant No.1 and the notices for execution of decree for possession was also issued to complainant.

6. The FIR would also show that specific abuses in the name of caste have not been narrated.
7. Taking into totality of the facts and circumstances, primarily it appears that some dispute arose between the parties for possession of the land, for which a civil suit was filed where a decree was passed in favour of applicant No.1. Since the dispute is entirely of civil nature in such facts situation of the case, I am of the opinion that bar of Section 18 of the Act, would not apply. Therefore, I am inclined to extend the benefit of section 438 Cr.P.C., to the applicants.
8. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on each of them executing a personal bond in sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the officer

arresting them or the concerned Investigating Officer.

The applicants shall also abide by the following conditions :-

- (i) that they shall make themselves available for interrogation before the investigating officer as and when required;
- (ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any police officer;
- (iii) that they shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE